

**Overnite Transportation Company and International Brotherhood of Teamsters, AFL-CIO, Local Union No. 28, Petitioner.** Case 11-RC-6258

June 30, 2000

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On April 7, 1998, the Regional Director for Region 11 issued a Decision and Direction of Election in which he found that the petitioned-for unit of approximately 159 dockworkers and 22 jockeys (hostlers) was *not* appropriate and that the unit must also include city drivers, road drivers, check bay attendants, tire changers, maintenance workers, janitorial workers, “OS&D (overage, shortage, and damage)” clerks, and operations clerks—essentially a service center unit of approximately 351 employees, excluding only mechanics and mechanic leadmen.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board’s Rules and Regulations, the Petitioner and the Employer filed timely requests for review of the Regional Director’s decision. The Petitioner contended that the petitioned-for unit is an appropriate unit. The Employer contended that the Regional Director should have found appropriate a wall-to-wall unit. On June 9, 1998, the Board granted the Petitioner’s and Employer’s requests for review.<sup>1</sup> Neither party filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record in this proceeding, we conclude that the smallest appropriate unit that includes the petitioned-for dockworkers and jockeys must also include substantially all employees who are unskilled and work exclusively at the service center. Thus, we find that the dockworkers and jockeys, and the facility maintenance employees, and janitors, excluding drivers, mechanics, mechanic leadmen, and their helpers (check bay attendants, tire changers and parts clerks), constitute an appropriate unit. As the evidence is insufficient to determine whether the OS&D clerks, the operations clerks, and the shop clerk are plant or office clericals, we shall permit them to vote under challenge.

I. FACTS

The Employer is a freight carrier operating 170 service centers throughout North America, including its service center in Gaffney, South Carolina. Freight is transported to the Gaffney service center from the other service centers. Trucks from Gaffney then transport goods to other service centers or to the Employer’s individual customers. The employees in issue largely work in the terminal

<sup>1</sup> The Board’s Order denied the Petitioner’s request to stay the election and denied the Employer’s request for review of the Regional Director’s Order Postponing the Election. The election is currently blocked by pending unfair labor practice proceedings.

building area (warehouse, dock, and main office), the shop building area (tractor-trailer shop, wash and check bays, road dispatch office, and “bunk house” for out-of-town road drivers), or the yard.

Dockworkers perform the loading and unloading of outbound and inbound trailers that are positioned at the dock. Jockeys move the trailers around the yard using a “jockey wagon” so that the trailers can be unloaded or loaded and then attached to a designated tractor. The Employer’s “work measurement” reports classify the work of the jockeys and dockworkers as “dock work.” Two facility maintenance employees perform routine maintenance on the physical plant, while four janitors perform cleanup duties in the buildings. The mechanics and the parts clerks work in the shop building area where the shop supervisors are located. Mechanics perform repairs on the tractors and trailers, while nearby in the check and wash bays check bay attendants perform routine maintenance on the tractors.<sup>2</sup>

Jockeys, dockworkers, check bay attendants, maintenance employees, and janitors do not possess any special skills or qualifications, but all drivers (city or road) must possess a commercial driver’s license (CDL) and meet U.S. Department of Transportation regulations for driving. Mechanics receive highly specialized training and education, and must provide their own tools.

Unlike all other service center employees, city and road drivers spend virtually their entire workday away from the service center. City drivers make local pickups and deliveries to customers within a 35-mile radius of the terminal, while road drivers transport freight to distant service centers. Road drivers receive dispatches from the Gaffney road dispatchers and also may communicate with the Employer’s central dispatch in Richmond, Virginia. City drivers service designated local routes and carry Employer-issued beepers for dispatching on the road by Gaffney dispatchers.

There is companywide seniority for layoffs, but the routes of the drivers and the shift times of all employees (except road drivers, who do not have shifts per se) are assigned according to separate seniority within each classification.<sup>3</sup> All employees are paid hourly except for road drivers, who are paid based on mileage. Wage and benefit levels are similar for all the hourly employees, except janitors, who receive nearly \$4 per hour less than all other employees. Supervisors and managers hold meetings with separate groups of city drivers, road drivers, jockeys, and dockworkers.

<sup>2</sup> Although the record contains no evidence regarding the precise duties of tire changers, the Employer does not dispute the Regional Director’s finding that the Employer has an “unspecified number of employees assigned to change tires on the tractors and trailers at the Gaffney facility,” and that tire changers share common supervision with check bay attendants.

<sup>3</sup> It appears that city drivers have seniority lists for shifts and for route assignments.

Very few of the dockworkers (7 of 159) and jockeys (3 of 22) possess CDLs necessary to perform driving duties. Most of these employees drive voluntarily and on their day off. Two of the dockworkers who possess a CDL work on the dock in the morning and perform city driving each afternoon. An unspecified number of mechanics have a CDL and occasionally perform local deliveries. Road and city drivers perform incidental amounts of dock work or jockey-like work at the Gaffney terminal. Mechanics perform duties of the check bay attendants during periods when the attendants are not scheduled to work. There was testimony that 70 percent of city drivers and 50 percent of road drivers formerly served as dockworkers or jockeys. Except for layoffs,<sup>4</sup> all permanent transfers of employees have been voluntary.

Some supervisors have “responsibility” for several classifications of employees, or they may “supervise” employees when the employees enter their area of the facility. Thus, there is some common intermediate supervision or “cross-supervision” of classifications. Classifications with separate immediate supervision are shop personnel (mechanics, check bay attendants, parts clerks, and, apparently, tire changers), and facility maintenance and janitorial employees. It is not clear from the record whether dockworkers, jockeys, and drivers have separate immediate supervision.

## II. ANALYSIS

The Regional Director found that the petitioned-for unit of dockworkers and jockeys is not appropriate. He also rejected the Employer’s proposed alternative of a wall-to-wall unit. The Regional Director found a service centerwide unit, excluding mechanics and mechanic leadmen, to be appropriate. The Employer contends that, after finding the petitioned-for unit is not appropriate, the Regional Director should have found its alternative wall-to-wall unit appropriate.

The Board’s procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties,<sup>5</sup> and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. See *NLRB v. Lake County Assn. For the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997); *State Farm Mutual Automobile Insurance Co. v. NLRB*, 411 F.2d 356, 358, 360–361 (7th Cir. 1969) (en banc), cert. denied 396 U.S. 932 (1969). The Board generally attempts to select a unit that is the “smallest appropriate unit” encompassing the petitioned-for em-

ployee classifications. See, e.g., *R & D Trucking*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967).

We find that the smallest appropriate unit encompassing the petitioned-for classifications must include all employees who, like the dockworkers and jockeys, are unskilled and work exclusively at the service center. Thus, in agreement with the Regional Director, we find that the unit must include the facility maintenance employees and janitors since they do not possess a separate community of interest from dockworkers and jockeys. Further, although we agree with the Regional Director’s exclusion of the mechanics from the unit, we disagree with his inclusion of the drivers as explained below.

The unit we find appropriate is akin to a warehouse-type unit, which usually includes unskilled shipping and receiving employees, but may exclude drivers and mechanics. See, e.g., *Nuturn Corp.*, 235 NLRB 1139, 1140 fn. 4 (1978); *Cal-Maine Farms, Inc.*, 249 NLRB 944 (1980).

Thus, according to the Employer’s work measurement reports, jockeys and dockworkers perform the common function of “dock work,” which does not require specialized skills or training. Similarly, facility maintenance employees and janitors possess no special skills or training to perform their routine tasks. Virtually all the employees in the unit we find appropriate spend their entire workday at the service center performing duties within their respective classifications. Only a small minority of jockeys (3 of 22) and dockworkers (7 of 159) are qualified to drive, and the record establishes that the amount of driving they perform is *de minimis*.<sup>6</sup> In addition, there was considerable testimony that most dockworkers and jockeys who drive do so voluntarily and on their days off. Although 70 percent of city drivers and 50 percent of road drivers formerly were dockworkers or jockeys, the testimony also established that virtually all permanent transfers are voluntary.<sup>7</sup> See, e.g., *Red Lobster*, 300 NLRB 908, 911 (1990); *Lipman’s*, 227 NLRB 1436, 1438 (1977) (voluntary, permanent interchange given less weight in unit determinations). In addition, dockworkers and jockeys possess separate terms and conditions of employment—significantly, they are the only employees that can be sent home for lack of work. Further, although there is some evidence of “cross-supervision” of classifications, there is also evidence of separate immediate supervision. Thus, the evidence regarding supervision is insufficient to support the Employer’s contention that a wall-to-wall unit is the smallest

<sup>4</sup> During a 1996 layoff, four or five road drivers exercised their bumping rights to move into jockey positions.

<sup>5</sup> See *Overnite Transportation*, 322 NLRB 723 fn. 1 (1996), *Dezcon, Inc.*, 295 NLRB 109, 111 (1989), and *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988).

<sup>6</sup> The Employer’s “work measurement reports,” which summarize work “inside and outside” of classifications, establish that jockeys performed over 40,000 hours of jockeying work during 1997 versus only 20 hours of city driving during the same period. Dockworkers performed over 270,000 hours of dock work versus 4269 hours of city driving during this period.

<sup>7</sup> The sole exception involved the 1996 layoffs.

appropriate unit. Based on the community-of-interest factors before us, we conclude that dockworkers, jockeys, facility maintenance employees, and janitors share a community of interest separate and distinct from other service center employees and therefore constitute an appropriate unit.

We find that inclusion of the remaining classifications of drivers, mechanics, mechanic leadmen, and mechanic helpers, is not required. See, e.g., *Pacemaker Mobile Homes*, 194 NLRB 742 (1971); and *E. H. Koester Bakery*, 136 NLRB 1006, 1008 (1962) (inclusion of drivers in more comprehensive units not required); *Dodge City of Wauwatosa*, 282 NLRB 459 (1986); and *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990) (mechanics and their helpers constitute appropriate craft unit). The drivers perform a separate function and possess special skills and qualifications. They work away from the facility most of the day and do not have any overlapping duties or interchange with jockeys, dockworkers, facility maintenance employees or janitors.<sup>8</sup> In addition, most drivers are paid a mileage rate, the only classification paid in this manner. Although mechanics and mechanic leadmen spend their entire day at the service center, they have received specialized training and education, and the Regional Director's additional uncontradicted findings<sup>9</sup>

<sup>8</sup> Although the Regional Director found that city drivers "regularly" help and "typically" join dockworkers to load the city trucks, the drivers' trailers generally are loaded and ready to go when they arrive for work. In addition, the work measurement reports for 1997 recorded only 68 hours of loading, compared to over 20,000 hours of driving, by city drivers. The Gaffney road drivers perform no loading or unloading at the Gaffney service center. Although the reports record 989 hours of loading and unloading at other terminals by the Gaffney road drivers, there is no evidence of the actual number of drivers involved, and we deem the amount of hours insubstantial given the large (128) number of Gaffney road drivers.

<sup>9</sup> In addition to specialized training, the Regional Director found that the mechanics supply their own tools, have separate supervision, have

establish that they would constitute a separate appropriate unit. *Dodge City of Wauwatosa*, supra. Although the mechanic helpers (parts clerks, check bay attendants, and tire changers) are unskilled, they perform functions with the mechanics related to the repair and maintenance of the tractors and trailers, and share supervision with mechanics. We conclude that drivers, mechanics, mechanic leadmen, and mechanic helpers do not share a sufficient community of interest with dockworkers, jockeys, facilities maintenance employees and janitors to mandate their inclusion in the unit.

Finally, we find the evidence is insufficient to determine whether the OS&D clerks, operations clerks, and shop clerk are plant or office clericals. We, therefore, permit them to vote under challenge.

### III. CONCLUSION

We reverse the Regional Director's finding that the appropriate unit must include all classifications, except the mechanics and mechanic leadmen. Instead, we find that the dockworkers, dock leadmen, jockeys (hostlers), facility maintenance employees, and janitors are an appropriate unit in which the election should be held. In addition, we permit the OS&D clerks, operations clerks, and shop clerk to vote under challenge.

### ORDER

The Regional Director's Decision is reversed, and his Direction of Election is vacated. This proceeding is remanded to the Regional Director for further appropriate action.

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infrequent contact with other employees, and interchange only with the check bay attendants.